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Attorney for Defendant Zone Medical, LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

I-FLOW CORPORATION, a Delaware corporation, Plaintiff, vs. ZONE MEDICAL, LLC, a California limited liability company, Defendant.	Case No. 08-CV-0057 – JAH (WMc) **DECLARATION OF NORBERT STAHL IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(B)(6) OR, IN THE ALTERNATIVE, MOTION TO STAY.** Date: March 3, 2008 Time: 2:30 p.m. Place: 940 Front St, San Diego, Court Room 11, 2nd Fl. Judge: Hon. John A. Houston

I, Norbert Stahl, declare as follows:

1. I am an attorney licensed to practice in the State of California and a member of Stahl Law Firm. I represent defendant Zone Medical, LLC ("Zone") in this case and I submit this declaration in support of Zone's Motion to Motion to Dismiss plaintiff I-Flow Corporation's ("I-Flow") Complaint pursuant to Fed. R. Civ. P. 12(b)(6) ("Rule 12(b)(6)") or, in the alternative, to stay. I make this declaration based on my personal knowledge and could and would competently testify thereto if called as a witness.

2. Attached as Exhibit A is a true and correct copy of I-Flow's "Complaint for Patent Infringement" in case number 07-cv-1200 DMS (NLS), entitled "I-Flow Corporation v. Apex Medical Technologies, Inc.," filed June 29, 2007.

3. Attached as Exhibit B is a true and correct copy of I-Flow's "Second Amended Complaint for Patent Infringement; Trade Secret Misappropriation; Breach of Confidence; and Common Law and Statutory Unfair Competition" in case number 07-cv-1200 DMS (NLS), entitled "I-Flow Corporation v. Apex Medical Technologies, Inc. and Mark McGlothlin," filed January 14, 2008.

4. Attached as Exhibit C is a true and correct copy of an "Ex Parte Reexamination Communication Transmittal Form" for U.S. Patent No. 5,284,481, mailed January 16, 2008.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed in San Carlos on January 30, 2008

By: s/Norbert Stahl
Norbert Stahl, Esq.

Attorney for Defendant Zone Medical, LLC

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Exhibit A

ORIGINAL

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Attorneys for Plaintiff
I-FLOW CORPORATION

FILED
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

I-FLOW CORPORATION, a Delaware corporation,

Plaintiff,

v.

APEX MEDICAL TECHNOLOGIES, INC., a California corporation

Defendant.

Civil Action No. 07 CV 1200 DMS (NLS)

COMPLAINT FOR PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff I-Flow Corporation ("I-FLOW") hereby complains of Defendant Apex Medical Technologies, Inc. ("Apex" or "Defendant"), and alleges as follows:

JURISDICTION AND VENUE

1. This action arises under the Patent Laws of the United States, Title 35 of the United States Code.

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391 and 1400(b).

THE PARTIES

4. Plaintiff I-FLOW is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in this District at 20202 Windrow Drive, Lake Forest, CA 92630.

5. I-FLOW is informed and believes, and thereon alleges, that Defendant Apex is a corporation organized and existing under the laws of the State of Illinois, having a place of business at 10064 Mesa Ridge Court, Suite 202, San Diego, CA 92121.

6. I-FLOW is informed and believes, and thereon alleges, that Defendant Apex conducts business throughout the United States, including in this Judicial District, and has committed the acts complained of in this Judicial District and elsewhere.

ALLEGATIONS FOR ALL CLAIMS FOR RELIEF

7. On February 8, 1994, the U.S. Patent and Trademark Office ("PTO") duly and lawfully issued U.S. Patent No. 5,284,481 entitled "Compact Collapsible Infusion Apparatus" (the "'481 patent"). I-FLOW is the owner by assignment of the '481 patent. On September 11, 2006, I-FLOW provided a copy of the '481 patent to Defendant. A copy of the '481 patent is attached hereto as Exhibit A.

8. Defendant's SOLACE™ Post-Operative Pain Relief Infusion System includes an infusion pump (the "SOLACE™ Infusion Pump") that is covered by the '481 patent.

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Exhibit A
page 2

9. I-FLOW is informed and believes, and thereon alleges, that Defendant, through its agents, employees and servants, has infringed I-FLOW'S patent rights through Defendant's making, using, selling, importing and/or offering to sell infusion pumps such as the SOLACE™ Infusion Pump. Furthermore, this infringement has been willful, Defendant having received actual notice of I-FLOW's patent rights.

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 5,284,481)

10. I-FLOW repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 9 of this Complaint.

11. This is a claim for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.

12. I-FLOW is informed and believes, and thereon alleges, that Defendant, through its agents, employees and servants, has been and is currently willfully and intentionally infringing the '481 patent by making, using, selling, importing and/or offering to sell infusion pumps, such as the SOLACE™ Infusion Pump, that are covered by at least one claim of the '481 patent. Defendant's acts constitute infringement of the '481 patent in violation of 35 U.S.C. § 271.

13. I-FLOW is informed and believes, and thereon alleges, that Defendant's infringement will continue unless enjoined by this Court.

14. I-FLOW is informed and believes, and thereon alleges, that Defendant has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount that is not presently known to I-FLOW. By reason of the aforesaid infringing acts, I-FLOW has been damaged and is entitled to monetary relief in an amount to be determined at trial.

15. Because of the aforesaid infringing acts, I-FLOW has suffered and continues to suffer great and irreparable injury, for which I-FLOW has no adequate remedy at law.

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PRAYER FOR RELIEF

WHEREFORE, I-FLOW prays for judgment in its favor against Defendant for the following relief:

A. An Order adjudging Defendant to have willfully infringed the '481 patent under 35 U.S.C. § 271;

B. An injunction enjoining Defendant, its officers, directors, agents, servants, employees and attorneys, and those persons in active concert or participation with Defendant, from directly or indirectly infringing the '481 patent in violation of 35 U.S.C. § 271;

C. That Defendant account for all gains, profits, and advantages derived by Defendant's infringement of the '481 patent in violation of 35 U.S.C. § 271, and that Defendant pay to I-FLOW all damages suffered by I-FLOW since at least February 8, 1994;

D. An Order for a trebling of damages and/or exemplary damages because of Defendant's willful conduct pursuant to 35 U.S.C. § 284;

E. An Order adjudging that this is an exceptional case;

F. An award to I-FLOW of the attorneys' fees and costs incurred by I-FLOW in connection with this action pursuant to 35 U.S.C. § 285;

G. An award of pre-judgment and post-judgment interest and costs of this action against Defendant; and

H. Such other and further relief as this Court may deem just.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 29, 2007

By: ______________________

Steven J. Nataupsky
Boris Zelkind
Ali S. Razai

Attorneys for Plaintiff
I-FLOW CORPORATION

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DEMAND FOR TRIAL BY JURY

I-FLOW CORPORATION hereby demands a trial by jury on all issues so triable.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 29, 2007

By: ______________________

Steven J. Nataupsky
Boris Zelkind
Ali S. Razai

Attorneys for Plaintiff
I-FLOW CORPORATION

IFLOWL.241L
3615387
040407

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Exhibit B

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Attorneys for Plaintiff and Counter-Defendant
I-FLOW CORPORATION

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

I-FLOW CORPORATION, a Delaware corporation, Plaintiff, v. APEX MEDICAL TECHNOLOGIES, INC., a California corporation; MARK MCGLOTHLIN, an Individual, Defendants.	Case No. 3:07-cv-1200 DMS (NLS) **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT; TRADE SECRET MISAPPROPRIATION; BREACH OF CONFIDENCE; AND COMMON LAW AND STATUTORY UNFAIR COMPETITION** **DEMAND FOR JURY TRIAL**
APEX MEDICAL TECHNOLOGIES, INC., a California corporation, Counter-Claimant, v. I-FLOW CORPORATION, a Delaware corporation, Counter-Defendant.	

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Plaintiff I-FLOW CORPORATION ("I-FLOW") hereby complains of Defendants APEX MEDICAL TECHNOLOGIES, INC. ("Apex") and MARK MCGLOTHLIN ("McGlothlin") (referred to jointly as "Defendants"), and alleges as follows:

JURISDICTION AND VENUE

1. This action arises under the Patent Laws of the United States, Title 35 of the United States Code.

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338, and 1367.

3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391 and 1400(b).

THE PARTIES

4. Plaintiff I-FLOW is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 20202 Windrow Drive, Lake Forest, CA 92630.

5. I-FLOW is informed and believes, and thereon alleges, that Defendant Apex is a corporation organized and existing under the laws of the State of Illinois, having a place of business in this district at 10064 Mesa Ridge Court, Suite 202, San Diego, CA 92121.

6. I-FLOW is informed and believes, and thereon alleges, that Defendant McGlothlin is an individual residing in San Diego County, California, and is the President and CEO of Defendant Apex.

7. I-FLOW is informed and believes, and thereon alleges, that all Defendants conduct business throughout the United States, including in this Judicial District, and have committed the acts complained of in this Judicial District and elsewhere.

ALLEGATIONS FOR ALL CLAIMS FOR RELIEF

8. On February 8, 1994, the U.S. Patent and Trademark Office ("PTO") duly and lawfully issued U.S. Patent No. 5,284,481 entitled "Compact Collapsible Infusion Apparatus" (the "'481 patent"). I-FLOW is the owner by assignment of the '481 patent. On September 11, 2006, I-FLOW provided a copy of the '481 patent to Defendants. A copy of the '481 patent is attached hereto as Exhibit A.

9. Defendants' SOLACE™ Post-Operative Pain Relief Infusion System includes an infusion pump (the "SOLACE™ Infusion Pump") that is covered by the '481 patent.

10. I-FLOW is informed and believes, and thereon alleges, that Defendant Apex, through its agents, employees and servants, has infringed I-FLOW'S patent rights through its making, using, selling, importing and/or offering to sell infusion pumps such as the SOLACE™ Infusion Pump. Furthermore, this infringement has been willful, Defendant Apex having received actual notice of I-FLOW's patent rights.

11. I-FLOW is informed and believes, and thereon alleges, that Defendant McGlothlin, through his agents, employees and servants, has personally directed or participated in infringing I-FLOW'S patent rights by personally directing or participating in the making, using, selling, importing and/or offering to sell infusion pumps such as the SOLACE™ Infusion Pump. Furthermore, this infringement has been willful, Defendant McGlothlin having received actual notice of I-FLOW's patent rights.

12. I-FLOW is informed and believes, and thereon alleges, that Defendant McGlothlin participated in The Adaptive Business Leaders Organization (ABL), an advisory group of which I-FLOW's principal is a member. I-FLOW is further informed and believes, and thereon alleges, that Defendant McGlothlin agreed to maintain the confidentiality of any confidential and proprietary information obtained in the course of his participation in the ABL. In the course of Defendant McGlothlin's participation in the ABL, Defendants gained access to I-FLOW's confidential business information regarding the infusion pump and drug delivery markets, including, but not limited to, business and marketing strategies, market analysis and product development strategies (hereinafter referred to as "Confidential Business Information"). I-FLOW's Confidential Business Information includes proprietary information.

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13. Defendants and I-FLOW engaged in a collaborative development effort during the calendar year 2005. In the course of this collaborative development effort, I-FLOW disclosed to Defendants, pursuant to obligations of secrecy, confidential technical information regarding I-FLOW's infusion pump technology, including, but not limited to, product specifications and requirements, methods of manufacturing, design challenges and other technical know-how (hereinafter referred to as "Confidential Technical Information"). I-FLOW's Confidential Technical Information includes proprietary information.

14. Defendants gained access to I-FLOW's Confidential Technical Information upon promising to maintain the secrecy of such information, as follows: "[Apex] shall consider all information furnished by [I-Flow] to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than the performing of the contract." Defendants also agreed not to "release to any person, details, specifications, drawings, blueprints or design of any article or component hereof which have been supplied to [Apex] by [I-Flow] and which components have been manufactured by [Apex] to [I-Flow's] specifications."

15. I-FLOW is informed and believes, and on that basis alleges, that Defendant Apex makes, uses, sells and offers for sale pain management devices, including, but not limited to, the SOLACE™ Post-Operative Pain Relief Infusion System.

16. I-FLOW is informed and believes, and on that basis alleges, that Defendant McGlothlin, through his agents, employees and servants, personally directs or participates in Apex's making, using, selling and offering for sale pain management devices, including, but not limited to, the SOLACE™ Post-Operative Pain Relief Infusion System.

17. I-FLOW is informed and believes, and on that basis alleges that Defendants have misused and continue to misuse I-FLOW's Confidential Business Information and Confidential Technical Information, obtained under obligations of secrecy and confidentiality for the purpose of developing Defendants' own business to unfairly compete with I-FLOW.

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18. I-FLOW is informed and believes, and on that basis alleges that Defendants, without authorization, have misappropriated and continue to misappropriate proprietary information included in I-FLOW's Confidential Business Information and Confidential Technical Information, obtained under obligations of secrecy and confidentiality for the purpose of developing Defendants' own competing business.

19. I-FLOW is informed and believes, and on that basis alleges that Defendants have used and disclosed and continue to use and disclose I-FLOW's Confidential Business Information and Confidential Technical Information, in willful and conscious disregard of a duty of confidence owed to I-FLOW.

20. I-FLOW is informed and believes, and on that basis alleges, that Defendants have committed and continue to commit unlawful business practices including, but not limited to, using I-FLOW's Confidential Business Information and Confidential Technical Information for Defendants' own purposes, and adversely to the interests of I-FLOW and its business venture.

21. By the aforesaid acts of Defendants, I-FLOW has been greatly damaged, and will continue to be irreparably damaged unless Defendants are enjoined by the Court.

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 5,284,481)

22. I-FLOW repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 21 of this Complaint.

23. This is a claim for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.

24. I-FLOW is informed and believes, and thereon alleges, that Defendant Apex, through its agents, employees and servants, has been and is currently willfully and intentionally infringing the '481 patent by making, using, selling, importing and/or offering to sell infusion pumps, such as the SOLACE™ Infusion Pump, that are covered by at least one claim of the '481 patent. Defendant Apex's acts constitute infringement of the '481 patent in violation of 35 U.S.C. § 271.

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25. I-FLOW is informed and believes, and thereon alleges, that Defendant McGlothlin, through his agents, employees and servants, has been and is currently willfully and intentionally infringing the '481 patent by personally directing or participating in the making, using, selling, importing and/or offering to sell infusion pumps, such as the SOLACE™ Infusion Pump, that are covered by at least one claim of the '481 patent. Defendant McGlothlin's acts constitute infringement of the '481 patent in violation of 35 U.S.C. § 271.

26. I-FLOW is informed and believes, and thereon alleges, that Defendants' infringement will continue unless enjoined by this Court.

27. I-FLOW is informed and believes, and thereon alleges, that Defendants have derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount that is not presently known to I-FLOW. By reason of the aforesaid infringing acts, I-FLOW has been damaged and is entitled to monetary relief in an amount to be determined at trial.

28. Because of the aforesaid infringing acts, I-FLOW has suffered and continues to suffer great and irreparable injury, for which I-FLOW has no adequate remedy at law.

SECOND CAUSE OF ACTION

(TRADE SECRET MISAPPROPRIATION)

29. I-FLOW hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 28.

30. This is a cause of action for Misappropriation of Trade Secrets under the Uniform Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.*, based upon Defendant's wrongful and improper use and disclosure of proprietary information contained within I-FLOW's Confidential Business Information and Confidential Technical Information.

31. The proprietary information contained within I-FLOW's Confidential Technical Information is trade secret because it derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

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32. Defendants gained access to I-FLOW's Confidential Technical Information in the course of a collaborative development effort between the parties. Defendants were under an obligation to maintain the secrecy of the Confidential Techinical Information obtained during the parties' collaboration.

33. The proprietary information contained within I-FLOW's Confidential Business Information is trade secret because it derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

34. Defendants gained access to I-FLOW's Confidential Business Information in the course of Defendant McGlothlin's participation in the ABL, and such access to I-FLOW's Confidential Business Information was subject to confidentiality agreements. I-FLOW is informed and believes, and thereon alleges, that Defendants were under a duty to not use for their benefit or disclose the confidential information learned in the course of participation in the ABL.

35. I-FLOW took reasonable precautions under the circumstances to protect its trade secrets, and all parties with access to the information were subject to obligations to maintain its secrecy.

36. I-FLOW is informed and believes, and thereon alleges, that Defendants have and continue to use and disclose to third parties I-FLOW's trade secrets without I-FLOW's consent or permission, in attempting to develop Defendants' own competing business.

37. I-FLOW is informed and believes, and thereon alleges, that Defendants have disclosed I-FLOW's trade secrets to third parties, maliciously and in willful and conscious disregard of the rights of I-FLOW.

38. As a direct and proximate result of Defendants' willful, improper, and unlawful use and disclosure of I-FLOW's trade secrets, I-FLOW has and will continue to suffer great harm and damage. I-FLOW will continue to be irreparably damaged unless Defendants are enjoined from further use and disclosure of I-FLOW's trade secret information.

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39. I-FLOW is informed and believes, and thereon alleges, that the aforementioned acts of Defendants in wrongfully misappropriating I-FLOW's trade secrets, were and continue to be willful and malicious, warranting an award of exemplary damages, as provided by Civ. Code § 3426.3(c), and an award of reasonable attorneys fees, as provided by Civ. Code § 3426.4.

THIRD CAUSE OF ACTION

(BREACH OF CONFIDENCE)

40. I-FLOW hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 39.

41. This is a cause of action for Breach of Confidence under California common law.

42. When I-FLOW disclosed its non-trade secret Confidential Business Information to Defendant McGlothlin, it did so in confidence in the course of participating in a professional advisory organization. Members of the ABL, including Defendant McGlothlin, undertake a confidentiality obligation, and, therefore, Defendants owed I-FLOW a legal duty of confidence to maintain the non-trade secret Confidential Business Information in a confidential manner, and not to use the non-trade secret Confidential Business Information for Defendants' own purposes.

43. Defendants accepted the non-trade secret Confidential Business Information as alleged herein voluntarily and while Defendant McGlothlin was participating in a professional advisory organization, thereby owing I-FLOW a duty of confidence with respect to I-FLOW's non-trade secret Confidential Business Information.

44. I-FLOW provided its non-trade secret Confidential Technical Information to Defendants in confidence for the purpose of furthering a collaborative development effort. Defendants undertook to maintain I-FLOW's non-trade secret Confidential Technical Information in confidence and to use it only for the purpose of the collaborative effort. Therefore, Defendants owed I-FLOW a legal duty of confidence to maintain the non-trade secret Confidential Technical Information in a confidential manner, and not to use the non-trade secret Confidential Technical Information for Defendants' own purposes.

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45. Defendants accepted the non-trade secret Confidential Technical Information as alleged herein voluntarily and for the purpose of furthering a collaborative development effort, thereby owing I-FLOW a duty of confidence with respect to I-FLOW's non-trade secret Confidential Technical Information.

46. I-FLOW is informed and believes, and thereon alleges, that Defendants have willfully and in conscious disregard for the duty of confidence owed to I-FLOW, used for Defendants' own purposes and disclosed to others I-FLOW's non-trade secret Confidential Business Information and/or non-trade secret Confidential Technical Information.

47. As a direct and proximate result of Defendants' willful, improper, and unlawful use and disclosure of I-FLOW's non-trade secret Confidential Business Information and non-trade secret Confidential Technical Information, I-FLOW has and will continue to suffer great harm and damage. I-FLOW will continue to be irreparably damaged unless Defendants are enjoined from further use and disclosure of I-FLOW's non-trade secret Confidential Business Information and non-trade secret Confidential Technical Information.

48. I-FLOW is informed and believes, and thereon alleges, that the aforementioned acts of Defendants, in breaching their duty of confidence owed to I-FLOW, were and continue to be willful and malicious, warranting an award of punitive damages in addition to the actual damages suffered by I-FLOW

FOURTH CAUSE OF ACTION

(UNFAIR COMPETITION)

49. I-FLOW hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 48.

50. This is a cause of action for Unfair Competition under the California common law.

51. The acts of Defendants, alleged herein, including, but not limited to, Defendants' misuse of I-FLOW's non-trade secret Confidential Business Information and non-trade secret Confidential Technical Information for the purposes of developing Defendants' own business to compete with that of I-FLOW, constitutes unlawful, unfair, and fraudulent business practices in violation of the California common law of Unfair Competition.

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52. I-FLOW is informed and believes, and thereon alleges, that Defendants have willfully and in conscious disregard for I-FLOW's rights and its business, committed unfair and unlawful business practices including, but not limited to, using for Defendants' own purposes, and adversely to the interests of I-FLOW and its business venture, I-FLOW's non-trade secret Confidential Business Information and non-trade secret Confidential Technical Information.

53. As a direct and proximate result of Defendants' willful, improper, and unlawful use and disclosure of I-FLOW's non-trade secret Confidential Business Information and non-trade secret Confidential Technical Information, I-FLOW has and will continue to suffer great harm and damage. I-FLOW will continue to be irreparably damaged unless Defendants are enjoined from further committing unfair and unlawful business practices against I-FLOW and I-FLOW's business.

FIFTH CAUSE OF ACTION

(STATUTORY UNFAIR COMPETITION)

54. I-FLOW hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 53.

55. This is a cause of action for Statutory Unfair Competition under California Bus. & Prof. Code § 17200, et seq.

56. The acts of Defendants alleged herein, including, but not limited to, Defendants' misuse of I-FLOW's non-trade secret Confidential Business Information and non-trade secret Confidential Technical Information for the purpose of developing Defendants' own business to compete with that of I-FLOW, constitutes unlawful, unfair, and fraudulent business practices in violation of California Bus. & Prof. Code § 17200, et seq.

57. As a direct and proximate result of Defendants' willful, improper, and unlawful use and disclosure of I-FLOW's non-trade secret Confidential Business Information and non-trade secret Confidential Technical Information, I-FLOW has and will continue to suffer great harm and damage. I-FLOW will continue to be irreparably damaged unless Defendants are enjoined from further committing unfair and unlawful business practices against I-FLOW and I-FLOW's business.

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PRAYER FOR RELIEF

WHEREFORE, I-FLOW prays for judgment in its favor against Defendants for the following relief:

A. An Order adjudging Defendants to have willfully infringed the '481 patent under 35 U.S.C. § 271;

B. An injunction enjoining Defendants, their respective officers, directors, agents, servants, employees and attorneys, and those persons in active concert or participation with Defendants, from directly or indirectly infringing the '481 patent in violation of 35 U.S.C. § 271;

C. That Defendants account for all gains, profits, and advantages derived by Defendants' infringement of the '481 patent in violation of 35 U.S.C. § 271, and that Defendants pay to I-FLOW all damages suffered by I-FLOW since at least February 8, 1994;

D. An Order for a trebling of damages and/or exemplary damages because of Defendants' willful conduct pursuant to 35 U.S.C. § 284;

E. An Order adjudging that this is an exceptional case;

F. An award to I-FLOW of the attorneys' fees and costs incurred by I-FLOW in connection with this action pursuant to 35 U.S.C. § 285;

G. An award of pre-judgment and post-judgment interest and costs of this action against Defendants;

H. That Defendants be adjudged to have misappropriated I-FLOW's trade secrets in violation of the Uniform Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.*, and that Defendants' actions in doing so be adjudged willful and malicious;

I. That Defendants be adjudged to have breached their duty of confidence owed to I-FLOW under the common law of the State of California, and that Defendants' acts in doing so be adjudged willful and malicious;

J. That Defendants be adjudged to have competed unfairly with I-FLOW under the common law of the State of California;

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K. That Defendants be adjudged to have competed unfairly with I-FLOW under California Business and Professions Code § 17200, and that Defendants' actions in doing so be adjudged willful and done knowingly;

L. That Defendants, their respective agents, servants, employees and attorneys, and all those persons in active concert or participation with it, be forthwith preliminarily and thereafter permanently enjoined, pursuant to 35 U.S.C. § 283 and California Business and Professions Code § 17200 from further disclosing to any third parties any of I-FLOW's Confidential Business Information and Confidential Technical Information and unfairly competing with I-FLOW in any manner;

M. That Defendants be directed to file with this Court and serve on Plaintiff within thirty (30) days after the service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

N. That Defendant be required to account to I-FLOW for any and all gains, profits and advantages derived by it, and all damages sustained by I-FLOW, by reason of Defendants' acts complained herein, including Defendants' breach of confidence and Defendants' common law and statutory unfair competition;

O. That the Court deem this case exceptional under 15 U.S.C. § 1117 and award I-FLOW reasonable attorneys' fees; and

P. Such other and further relief as this Court may deem just.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 14, 2008

By: s/Boris Zelkind
Steven J. Nataupsky
Boris Zelkind
Ali S. Razai

Attorneys for Plaintiff and Counter-Defendant
I-FLOW CORPORATION

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DEMAND FOR TRIAL BY JURY

I-FLOW CORPORATION hereby demands a trial by jury on all issues so triable.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 14, 2008

By: s/Boris Zelkind
Steven J. Nataupsky
Boris Zelkind
Ali S. Razai

Attorneys for Plaintiff and Counter-Defendant
I-FLOW CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2008, I caused the **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT; TRADE SECRET MISAPPROPRIATION; BREACH OF CONFIDENCE; AND COMMON LAW AND STATUTORY UNFAIR COMPETITION** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following person(s):

Ralph B. Kalfayan, Esq.
KRAUSE, KALFAYAN, BENINK & SLAVENS LLP
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I certify and declare under penalty of perjury under the laws of the State of California that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the forgoing is true and correct.

Executed on January 14, 2008, at San Diego, California.

Megan Ptacin
Megan Ptacin

IFLOWL.241L

Exhibit B
page 19

Exhibit C

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

Stahl Law Firm

2 Meadowsweet Lane

San Carlos, CA 94070

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/008,880*.

PATENT NO. *5284481*.

ART UNIT *3993*.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/008,880	11/12/2007	5284481	22-01	4173

20995 7590 01/16/2008

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

ART UNIT	PAPER NUMBER

DATE MAILED: 01/16/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Exhibit C
page 21

Order Granting / Denying Request For Ex Parte Reexamination	**Control No.** 90/008,880	**Patent Under Reexamination** 5284481	
	Examiner Catherine S. Williams	**Art Unit** 3993	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed *12 November 2007* has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a)☐ PTO-892, b)☐ PTO/SB/08, c)☒ Other: *PTO-1449*

1. ☒ The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2. ☐ The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

a) ☐ by Treasury check or,

b) ☐ by credit to Deposit Account No. _____, or

c) ☐ by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

cc:Requester (if third party requester)

DECISION

A substantial new question of patentability affecting claims 1-28 of United States Patent Number 5,284,481 is raised by the request for *ex parte* reexamination.

Service of Papers

After the filing of a request for reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party (or parties where two or more third party requester proceedings are merged) in the reexamination proceeding in the manner provided in 37 CFR 1.248. See 37 CFR 1.550(f).

Waiver of Right to File Patent Owner Statement

In a reexamination proceeding, Patent Owner may waive the right under 37 C.F.R. 1.530 to file a Patent Owner Statement. The document needs to contain a statement that Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement and proof of service in the manner provided by 37 C.F.R. 1.248, if the request for reexamination was made by a third party requester, see 37 C.F.R 1.550(f). The Patent Owner may consider using the following statement in a document waiving the right to file a Patent Owner Statement:

WAIVER OF RIGHT TO FILE PATENT OWNER STATEMENT

Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement.

Extensions of Time

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extensions of time in *ex parte* reexamination proceedings are provided for in 37 CFR 1.550(c).

Amendment in Reexamination Proceedings

Patent owner is notified that any proposed amendment to the specification and/or claims in this reexamination proceeding must comply with 37 CFR 1.530(d)-(j), must be formally presented pursuant to 37 CFR 1.52(a) and (b), and must contain any fees required by 37 CFR 1.20(c). See MPEP § 2250(IV) for examples to assist in the preparation of proper proposed amendments in reexamination proceedings.

Submissions

In order to insure full consideration of any amendments, affidavits or declarations or other documents as evidence of patentability, such documents must be submitted in response to the first Office action on the merits (which does not result in a close of prosecution). Submissions after the second Office action on the merits, which is intended to be a final action, will be governed by the requirements of 37 CFR 1.116, after final rejection and by 37 CFR 41.33 after appeal, which will be strictly enforced.

Notification of Concurrent Proceedings

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 5,284,481 throughout the course of this reexamination proceeding. Likewise, if present, the third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Substantial New Question

The substantial new question of patentability (SNQP) is based on:

USPN 3,810,503 to Lewis et al.
USPN 4,547,900 to Larkin et al.
USPN 4,686,125 to Johnston et al.
USPN 5,080,652 to Sancoff et al.
USPN 5,105,983 to Sancoff et al.
EPO 90311152.4 to Block Medical, Inc.

A discussion of the specifics now follows:

Requester's Position

1. The request indicates that Requester considers that Claims 1-2,4-5,10,12-17,20,27-28 of the 5,284,481 Patent are unpatentable over Sancoff et al (USPN 5,105,983).

2. The request indicates that Requester considers that Claims 1-28 of the 5,284,481 Patent are unpatentable over Sancoff et al (USPN 5,105,983).

3. The request indicates that Requester considers that Claims 1-28 of the 5,284,481 Patent are unpatentable over Sancoff et al (USPN 5,105,983) and either Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), or Johnston et al (USPN 4,686,125).

4. The request indicates that Requester considers that Claims 1-28 of the 5,284,481 Patent are unpatentable over Sancoff et al (USPN 5,080,652) and either Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), or Johnston et al (USPN 4,686,125).

3. The request indicates that Requester considers that Claims 1-28 of the 5,284,481 Patent are unpatentable over Block Medical (EPO 90311152.4) and either Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), or Johnston et al (USPN 4,686,125).

Analysis of the Prior Art Provided in the Request

It is agreed that the consideration of Sancoff et al (USPN 5,105,983) raises a SNQP as to claims 1-28 of the '481 Patent. As pointed out in the request on pages 2 through 20, Sancoff teaches a compact portable collapsible infusion apparatus for dispensing a liquid under pressure at a substantially constant flow rate over a period of time (see summary) comprising: an elongated generally, cylindrical support member having inlet means including an inlet port in one end of said member, and outlet means including an outlet port in the other end of said member (see figure 10); elongated elastic sleeve means mounted in non-stretched surface contact and sealingly secured at fixed spaced longitudinal positions on said support member for defining a substantially zero non-pressurized volume pressure reservoir for holding a liquid in a pressurized state for dispensing therefrom (element 152, see figures 10-11); a first housing means comprising collapsible non-stretchable housing means / shell for containing and enclosing said support member and said pressure reservoir for enabling said pressure reservoir to expand naturally and for confining said reservoir to fill concentrically about said support member (element 146, see figures 10 and 11); inlet means (156) for introducing a liquid into said elastic pressure reservoir; and outlet means (160) for dispensing liquid from said pressure reservoir to a selected site.

Sarnoff et al (USPN 5,105,983) was used in rejecting claims 11,21-28 in the Non-Final Office Action dated 4/27/93; however, the reference was used as a secondary reference and not relied on to teach the limitations as described above. Further, there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether or not these claims are patentable. Accordingly, Sarnoff et al (USPN 5,105,983) raises a substantial new question of patentability as to claims 1-28, which question has not been decided in a previous examination of the '481 Patent.

It is agreed that the consideration of Sancoff et al (USPN 5,105,983) and either Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), or Johnston et al (USPN 4,686,125) raises a SNQP as to claims 1-28 of the '481 Patent. As pointed out in the request on pages 21 through 35, Sancoff teaches a compact portable collapsible infusion apparatus for dispensing a liquid under pressure at a substantially constant flow rate over a period of time (see summary) comprising: an elongated generally, cylindrical support member having inlet means including an inlet port in one end of said member, and outlet means including an outlet port in the other end of said member (see figure 10); elongated elastic sleeve means mounted in non-stretched surface contact and sealingly secured at fixed spaced longitudinal positions on said support member for defining a substantially zero non-pressurized volume pressure reservoir for holding a liquid in a pressurized state for dispensing therefrom (element 152, see figures 10-11); a first housing means comprising collapsible non-stretchable housing means / shell for containing and enclosing said support member and said pressure reservoir for enabling said pressure reservoir to expand naturally and for confuting said reservoir to fill concentrically about said support member (element 146, see figures 10-11); inlet means (156) for introducing a liquid into said elastic pressure reservoir; and outlet means (160) for dispensing liquid from said pressure reservoir to a selected site.

Lewis et al (USPN 3,810,503) teaches containers made of "polypropylene, copolymers of polypropylene, polyethylene, copolymers of polyethylene, and polyvinyl chloride" ('503 patent, col. 9, lines 5-7) with a wall thickness of from 0.005 inches to 0.06 inches ('503 patent, col. 9, lines 12- 15). Larkin et al (USPN 4,547,900) teaches "flexible container[s]" (title) made of "plastic material such as polyethylene, polypropylene, polyvinylchloride or other commonly known plastics" ('900 patent, col. 4, lines 63-65). Johnston et al (USPN 4,686,125) teaches "film laminate for flexible containers" ('125 patent, col. 1, lines 67-68) made of polyethylene and polyurethane ('125 patent, col. 2, lines 4, 10) with a wall thickness of 90 to 240 microns ('125 patent, col. 2, lines 7-10).

Sarnoff et al (USPN 5,105,983) was used in rejecting claims 11,21-28 in the Non-Final Office Action dated 4/27/93; however, the reference was used as a secondary reference and not relied on to teach the limitations as described above. Additionally, Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), or Johnston et al (USPN 4,686,125) were not relied on during the prosecution of the '481 patent. Further, there is a substantial likelihood that a reasonable examiner would consider these teachings important in deciding whether or not these claims are patentable. Accordingly, Sarnoff et al (USPN 5,105,983) and either Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), or Johnston et al (USPN 4,686,125) raises a substantial new question of patentability as to claims 1-28, which question has not been decided in a previous examination of the '481 Patent.

4. It is agreed that the consideration of Sancoff et al (USPN 5,080,652) and either Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), or Johnston et al (USPN 4,686,125) raises a SNQP as to claims 1-28 of the '481 Patent. As pointed out in the request on pages 35 through 49, Sancoff '652 teaches a compact portable collapsible infusion apparatus for dispensing a liquid under pressure at a substantially constant flow rate over a period of time (see summary) comprising: an elongated generally, cylindrical support member having inlet means including an inlet port in one end of said member, and outlet means including an outlet port in the other end of said member (see figures 1-2); elongated elastic sleeve means mounted in non-stretched surface contact and sealingly secured at fixed spaced longitudinal positions on said support member for defining a substantially zero non-pressurized volume pressure reservoir for holding a liquid in a pressurized state for dispensing therefrom (element 22, see col. 4 lines 16-26); a first housing means comprising collapsible non-stretchable housing means / shell for containing and enclosing said support member and said pressure reservoir for enabling said pressure reservoir to expand naturally and for confuting said reservoir to fill concentrically about said support member (element 12, see col. 5 lines 14-19); inlet means (52) for introducing a liquid into said elastic pressure reservoir; and outlet means (60) for dispensing liquid from said pressure reservoir to a selected site.

Lewis et al (USPN 3,810,503) teaches containers made of "polypropylene, copolymers of polypropylene, polyethylene, copolymers of polyethylene, and polyvinyl chloride" ('503 patent, col. 9, lines 5-7) with a wall thickness of from 0.005 inches to 0.06 inches ('503 patent, col. 9, lines 12- 15). Larkin et al (USPN 4,547,900) teaches "flexible container[s]" (title) made of "plastic material such as polyethylene, polypropylene, polyvinylchloride or other commonly known plastics" ('900 patent, col. 4, lines 63-65). Johnston et al (USPN 4,686,125) teaches "film laminate for flexible containers" ('125 patent, col. 1, lines 67-68) made of polyethylene and polyurethane ('125 patent, col. 2, lines 4, 10) with a wall thickness of 90 to 240 microns ('125 patent, col. 2, lines 7-10).

Sarnoff et al (USPN 5,080,652) was used in rejecting claims 1-16 and 21-28 in the Non-Final Office Action dated 4/27/93. However, the reference is now being relied on to teach a medical infusion kit including a plurality of substantially identically collapsible infusion devices; a generally cylindrical substantially rigid housing having an open end for receiving said support member; and a substantially spherical configuration with a removable closure for enabling receipt of the pressure reservoir in a filled condition. Additionally, Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), and Johnston et al (USPN 4,686,125) were not relied on during the prosecution of the '481 patent. Further, there is a substantial likelihood that a reasonable examiner would consider these teachings important in deciding whether or not these claims are patentable. Accordingly, Sarnoff et al (USPN 5,080,652) and either Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), or Johnston et al (USPN 4,686,125) raises a substantial new question of patentability as to claims 1-28, which question has not been decided in a previous examination of the '481 Patent.

5. Block Medical (EPO 90311152.4) and either Lewis et al (USPN 3,810,503), Larkin et al (USPN 4,547,900), or Johnston et al (USPN 4,686,125) does not raise a SNQP as to claims 1-28 of the '481 Patent. Block Medical has priority to US applications 07/429,313 and

07/492,982 which resulted in USPNs 5,080,652 and 5,105,983 to Sarnoff above. Therefore, the Block Medical reference is a redundant reference that does not present a SNQP but rather recites the same SNQP as already presented.

NOTICE RE PATENT OWNER'S CORRESPONDENCE ADDRESS

Effective May 16, 2007, 37 CFR 1.33(c) has been revised to provide that:

The patent owner's correspondence address for all communications in an *ex parte* reexamination or an *inter partes* reexamination is designated as the correspondence address of the patent.

> *Revisions and Technical Corrections Affecting Requirements for Ex Parte and Inter Partes Reexamination*, 72 FR 18892 (April 16, 2007)(Final Rule)

The correspondence address for any pending reexamination proceeding not having the same correspondence address as that of the patent is, by way of this revision to 37 CFR 1.33(c), automatically changed to that of the patent file as of the effective date.

This change is effective for any reexamination proceeding which is pending before the Office as of May 16, 2007, including the present reexamination proceeding, and to any reexamination proceeding which is filed after that date.

Parties are to take this change into account when filing papers, and direct communications accordingly.

In the event the patent owner's correspondence address listed in the papers (record) for the present proceeding is different from the correspondence address of the patent, it is strongly encouraged that the patent owner affirmatively file a Notification of Change of Correspondence Address in the reexamination proceeding and/or the patent (depending on which address patent owner desires), to conform the address of the proceeding with that of the patent and to clarify the record as to which address should be used for correspondence.

Telephone Numbers for reexamination inquiries:

Reexamination and Amendment Practice	(571) 272-7703
Central Reexam Unit (CRU)	(571) 272-7705
Reexamination Facsimile Transmission No.	(571) 273-9900

Correspondence

All correspondence relating to this *ex parte* reexamination proceeding should be directed as follows:

By **U.S. Postal Service Mail** to:

Mail Stop *Ex Parte* Reexam
ATTN: Central Reexamination Unit
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX to: (571) 273-9900
Central Reexamination Unit

By hand to: Customer Service Window
ATTN: Central Reexamination Unit
Randolph Building
401 Dulany St.
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

Signed:

/Catherine S. Williams/
Catherine S. Williams
CRU Examiner
GAU 3993
(571) 272-4970

Conferee:_____/DOR/__________

Conferee:_____AK_____

REPLACEMENT INFORMATION DISCLOSURE STATEMENT BY APPLICANT

Form PTO-1449 (Modified)
(Use several sheets if necessary)

Sheet 1 of 1

COMPLETE IF KNOWN	
Control Number	90/008,880
Patent Number	5,284,481
Filing Date	December 2, 1992
First Named Inventor	Emil H. Soika
Group Art Unit	Not assigned
Examiner Name	Not assigned
Attorney Docket No.	22-01

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No.	U.S. Patent or Application NUMBER	Kind Code (if known)	Name of Patentee or Inventor of Cited Document	Date of Publication or Filing Date of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
ASW.	1	3,810,503		Lewis, Jr. *et al.*	08/22/72	
ASW.	2	4,547,900		Larkin *et al.*	09/12/80	
ASW.	3	4,686,125		Johnston *et al.*	09/28/84	
ASW.	4	5,080,652		Sancoff *et al.*	03/12/90	
ASW.	5	5,105,983		Sancoff *et al.*	10/31/89	

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.	Office	NUMBER	Kind Code	Name of Patentee or Applicant of Cited Document	Date of Publication or Filing Date of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T
ASW.	6	EPO	9031115 2.4		Block Medical, Inc.	10/11/90		

OTHER NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume issue number(s), publisher, city and/or country where published.	T

EXAMINER	DATE CONSIDERED
Arthur S. Williams	12/3/08

*EXAMINER: Initial if reference considered, whether or not criteria is in conformance with MPEP609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to application(s).

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2008, I electronically filed the foregoing document entitled:

DECLARATION OF NORBERT STAHL IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(B)(6) OR, IN THE ALTERNATIVE, MOTION TO STAY

with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail address:

boris.zelkind@kmob.com (Boris Zelkind).

I certify and declare under penalty of perjury under the laws of the Sate of California that the foregoing is true and correct.

Executed on January 30, 2008, at San Carlos, California.

By: s/Norbert Stahl
Norbert Stahl, Esq.

Attorney for Defendant Zone Medical, LLC